

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:13-CR-76-FL-1
No. 5:17-CV-134-FL

JAMMEE DUCHEA TERRY,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Kimberly A. Swank, regarding the petitioner’s motion to vacate under 28 U.S.C. § 2255 (DE 92), and the government’s motion to dismiss (DE 101). After holding an evidentiary hearing on petitioner’s claim that he was deprived of right to assistance of counsel in noticing appeal, the magistrate judge recommends granting petitioner’s motion on this claim, vacating the judgment, and entering a new judgment from which appeal may be taken. No objections to the M&R have been filed, and the time within which to make any objection has expired.

Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, the government's motion to dismiss is DENIED, and petitioner's motion is GRANTED. Petitioner's motion to reinstate direct appeal rights (DE 88) is DISMISSED AS MOOT. The court VACATES its judgment entered July 9, 2014, and DIRECTS the clerk to enter a new judgment from which appeal may be taken.

SO ORDERED this the 18th day of May, 2018.

Louise W. Flanagan
LOUISE W. FLANAGAN
United States District Judge